

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-1196

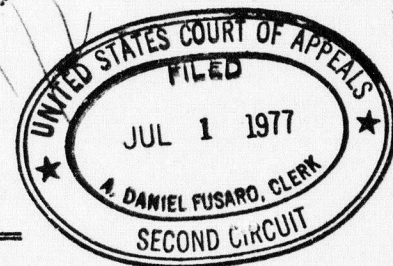
To be argued by
PHYLIS SKLOOT BAMBERGER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
:
UNITED STATES OF AMERICA,
:
Plaintiff-Appellee,
:
-against-
:
CHARLES RUSSO,
:
Defendant-Appellant.
:
-----x

*B
As*

Docket No. 77-1196



BRIEF FOR APPELLANT

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
CHARLES RUSSO
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,
Of Counsel.

CONTENTS

	<u>Page</u>
Table of Cases	i
Questions Presented	1
Statement Pursuant to Rule 28(a)(3)	
Preliminary Statement	2
Statement of Facts	2
ARGUMENT	
I IT WAS ERROR FOR THE TRIAL JUDGE TO SUBMIT THE 30-DAY ALTERNATIVE TO THE JURY, AND THE JUDGMENT MUST THEREFORE BE REVERSED	12
II THE JUDGE IMPROPERLY SUBMITTED THE \$2,000 ALTERNATIVE TO THE JURY	18
Conclusion	20

TABLE OF CASES

<u>Danielson v. United States</u> , 321 F.2d 441 (9th Cir. 1963) .	19
<u>Ianelli v. United States</u> , 420 U.S. 770 (1975)	12, 17
<u>Russell v. United States</u> , 369 U.S. 749 (1962)	19
<u>United States v. Feola</u> , 420 U.S. 671 (1975)	12, 14
<u>United States v. Goodson</u> , 502 F.2d 1303 (5th Cir. 1974) ..	19
<u>United States v. Jacobs</u> , 475 F.2d 270 (2d Cir. 1973)	17
<u>United States v. Natelli</u> , 527 F.2d 311 (2d Cir. 1975) .	14, 17
<u>United States v. Taylor</u> , 464 F.2d 240 (2d Cir. 1972)	16
<u>Yates v. United States</u> , 354 U.S. 298 (1957)	17

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CHARLES RUSSO,

Defendant-Appellant.

Docket No. 77-1196

BRIEF FOR APPELLANT

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

QUESTIONS PRESENTED

1. Whether it was error for the trial judge to submit the 30-day alternative to the jury, thus requiring reversal of the judgment.
2. Whether the judge improperly submitted the \$2,000 alternative to the jury, thus requiring reversal of the judgment.

STATEMENT PURSUANT TO RULE 28(a)(3)

PRELIMINARY STATEMENT

This is an appeal from a judgment rendered after a jury trial on March 28, 1977, in the United States District Court for the Western District of New York (The Honorable John T. Curtin) convicting appellant Charles Russo of conspiracy to conduct an illegal gambling business in violation of New York law (18 U.S.C. §§371; 1955). Appellant Russo was sentenced to 18 months' imprisonment, and is currently free on bail pending appeal.

The Legal Aid Society, Federal Defender Services Unit, was assigned as counsel on appeal, pursuant to the Criminal Justice Act, after trial counsel was relieved.

STATEMENT OF FACTS

A two-count indictment* charged appellant Charles Russo and Salvatore Russatti, Salvatore Gingello, and Paul Comfort with violation of 18 U.S.C. §1955 in that, between January 20, 1973, and April 20, 1973, they did unlawfully conduct an illegal gambling business involving five persons. It was also

*The indictment is "B" to the separate appendix to appellant's brief. The indictment was a superseding one, the Government having chosen to add the names of additional alleged co-conspirators to the indictment.

alleged that between January 20 and April 20, 1973, appellant Russo and the others conspired to conduct an illegal gambling business in violation of state law.*

Section 1955 defines an illegal business as one in violation of the law of a state, involving five people, and which has been or remains in substantially continuous operation in excess of 30 days or has a gross revenue of \$2,000 in any single day. Neither count of the indictment alleged that the daily gross receipts of the gambling business was \$2,000.

The principal witnesses for the Government were Paul Brana and Joseph Zito. Brana was an undercover agent who pretended to be a New Yorker involved in illegal activity and able to supply money to finance a dice game in Rochester (74**).

Zito was an informer. On December 12, 1972, he had been sentenced in a federal court to 12 years' imprisonment pursuant to a conviction for extortion (220). At the time Zito was sentenced, FBI agents Desvernine and Schaller contacted him in an effort to enlist his cooperation. After continuing contact over a period of about six weeks while Zito was free on bail pending appeal (375), Desvernine and Schaller were successful in their efforts, and Zito gave them information about people he knew (221-222).

*Paul Comfort's case was severed (Document #20 to the record on appeal) and has not yet been tried.

**Numerals in parentheses refer to pages of the transcript of the trial.

Zito testified that by helping the Government he would help himself (381). A \$5,000 fine imposed by the federal court was remitted (382, 385), and Zito served only two years of the 12-year prison sentence (461). From March 1973 to 1976 (455) he was paid about \$200 weekly by the FBI (335, 337), and over the four-year period, received about \$29,000 (457). He was permitted to keep his bookmaking operation in Batavia, New York (339). Zito admitted involvement in a series of criminal activities. Among the crimes for which he was not prosecuted (441) were his admitted paying \$2,000 to two men to beat a man named Costera over the head with baseball bats (473) and having two men beat up another man with a tire iron (445). He further admitted to having a friend rob a restaurant and then pretending to look for the thief as the thief hid in his car (438-439); to paying money to the City Council of Batavia to get a contract for a particular company and then extorting money from that company (440); and to breaking into the home of a Ms. Magee to plant a recording device (452).

Zito had known appellant Russo for 15 to 20 years, and had known Paul Comfort for three to four years (221). At the end of January 1973, Zito became associated with appellant Russo and Comfort in the operation of a dice game on Jay Street in Rochester (223, 280), in which he invested \$3,000. The game's employees were Zito, appellant, Paul Comfort, Joe Salerno, Frank Ferrara, Joe Comfort, and a man named Walter (225-226). Gingello came to Jay Street (230) and was paid \$100 for every

night the game was in operation for Gingello's permission to keep the game running (231, 282). Zito saw police come into the premises, go into the office with appellant Russo or Paul Comfort, and then leave (233). Appellant Russo or Comfort told Zito they made payments to the police (646). Early in March 1973 the Jay Street business was broke (234) and Zito, appellant Russo, and Comfort had each lost about \$7,000 (306).

At this time, Zito decided he would cooperate with the FBI (234). He was introduced to Agent Brana. On March 21, 1973, Zito and Brana met (72). Ten days later, Brana met with Zito and appellant. Brana represented that he had associates who could come up with money (74, 235-236). Appellant said he had a location and workers for a crap game in Rochester; these workers were Zito, "Pauly," and a stick man. Appellant asked Brana for \$5,000 because he had no money. Appellant explained that the expenses (170) or "nut" for running the game would be \$275 a day -- each worker getting \$35, the food man \$10, the rent \$15, and payoffs for the police of \$10 (75). He also said he would have to pay \$100 daily to the "good guys" or the "arm" to run the game (76). Appellant agreed to a 70-30 split of the proceeds, with 70% going to Brana (76, 237).

On April 2, 1973, appellant met with Brana and Zito. Appellant explained that the good guys had lost their money in Las Vegas (76-77), that Sammy G. was going to give \$5,000 to the game (77, 284), that the good guys (Sammy G., 79) would be willing to take "ice" for permission to operate (283-284) at a

rate of \$200 a week instead of \$100 a day (or \$600) (78, 289), and that the location of the business would be on Webster Street (76-78, 288) because the Jay Street location was not available (240). Appellant said he was fixing up Webster Street and would let Zito know when it was ready (79).

On April 8, 1973, Zito, Brana, and appellant Russo went to the Webster Street address. A single pool table was used as a dice table (80). Appellant said he would see Sammy G. the next day to see if the \$5,000 was forthcoming. A friend of appellant's, the manager of a bowling alley nearby on Webster Street, was to speak to the police captain about taking care of any problems (244), and appellant was also to see the precinct captain about "ice" to protect the site from a raid (82).

The game was played on April 9, 10, 11, and 12, 1973 (83, 90, 101, 110). The \$5,000 was supplied by Brana (83, 244), and each night after the close of business either he or Zito took the \$5,000 and any additional money, returning it the next day for the game (124, 176-177, 305-306).^{*} On the first night, the money was counted by appellant, Paul Comfort, Zito, and Brana (83). Also on that night, Zito saw Sol Sharfstein at the site for the first time. Appellant said he had put Sharfstein on to draw clientele with money. Zito told appellant to tell Brana about it to make him aware of any change in the plan

^{*}Sammy G. never supplied the additional \$5,000 (84, 92, 294, 302).

(246-247). Additional workers were also added (178).

The dice game and bets were made against the house with the \$5,000 government payroll (85, 253).

On April 9 and 10, Paul Comfort was the dealer; Sol Sharfstein, the box man;* Joe Salerno, a dealer and ladder man;** Frank Ferrara, the doorman; Joe Comfort, the kitchen man; and Walt, the stick man*** (85-86, 97-99, 316, 179, 297, 253). Zito, Brana, and appellant also worked. On April 11, appellant was box man and dealer; Salerno, dealer or ladder man; Sharfstein, box man; Walter, stick man; Paul Comfort, dealer and stick man; Billy Barton, doorman; and Joe Comfort, kitchen man (102, 258). On April 12, Walter, Zito, Sharfstein, Joe and Paul Comfort, Barton, Brana, and appellant worked again (115).

On all four nights the total amount bet was about \$35,000 (87, 100, 103, 116, 296, 300, 318).

On April 11, Gingello asked Zito who Brana was. Zito said that Brana was a friend from New York. Gingello said that they did not want strangers in town (261). Although Gingello said he thought Brana was an agent from Buffalo (348), Zito believed Gingello's real concern was whether Brana was cutting in on Rochester gambling (347, 349).

*The box man sat with a box of money, taking money from the dealers and supplying it for the game as needed (97).

**A ladder man sat on a ladder overlooking the table to observe what was going on (98) and to prevent cheating (316).

***A stick man moves the dice with a stick (98).

On April 12, Gingello and Russotti* went to Webster Street and interrupted a conversation between appellant and Zito in the office (267-269). The events which then occurred were transmitted through an electronic device worn by Zito (265) and recorded by another agent (516, 532-533). The jury listened to a small portion of the tape, both with and without a prepared and corrected (322) transcript (599-606) (Government Exhibit #27).* In the conversation, the jurors heard voices identified as those of Russotti and Gingello tell Zito to leave town with the guy he came with.

At the close of the Government's case, counsel for Russotti argued for acquittal, urging that the Government had failed to prove the existence of a business which lasted for 30 days. He also argued that the indictment had not alleged that \$2,000 daily gross revenue was received (657).

The Assistant United States Attorney argued in response that while Webster Street was only in operation for five days, the proof established that Webster Street was a continuation

*Russotti appeared at the premises only on April 12, 1973, entering at 8:59 p.m. and leaving at 9:05 (212).

**Agents Wiesner and Malsegna testified that, while familiar with the voices of appellant, Gingello, and Russotti, they could not identify all the voices on the tape as those of these three men (535-558, 562-568). Judge Curtin instructed the jurors that the transcript was merely for their aid, that they were to determine what the tape said, and that they were to disregard it if it did not seem to them to be correct. He specifically referred to the testimony of Wiesner and Malsegna (603-606).

of the Jay Street operation. He also asserted that the indictment was sufficient and that proof that the business had a \$2,000 daily gross revenue was shown by evidence of the wagers bet each night (658).

Counsel for Gingello requested entry of a judgment of acquittal on both counts, asserting that there was no proof of Gingello's participation in a conspiracy (661-662).

After presentation of one defense witness, the defense again challenged the Government's case. It was asserted that the indictment failed to allege a \$2,000 daily gross revenue, although the Government relied upon that theory to seek a conviction (694-695).* The court commented:

... [I]t seems to me in trying to prepare a defense it makes a big difference to the defendant whether the theory of the case is going to be whether the game was in operation more than 30 days or whether the take was more than \$2,000 in any single day.

(695).

The Government's position was that the factors constituting an illegal gambling business need not be set out in the indictment (696).

After discussion of the charge, defense counsel again raised the matter of whether the \$2,000 daily gross revenue was a necessary element to be charged in the indictment if the

*The motion is not part of the record certified on appeal by the district court clerk. From the context of the transcript, it appears that the motion was to dismiss the indictment for failure to prove the Government's theory of guilt.

Government chose to rely on it as proof of guilt (707). Counsel unequivocally stated:

Well, what we are saying, Judge, is that if their proof is sufficient on the question of 30 or more continuous days then that is the only theory that they are entitled to go to the jury on if, in fact, it is sufficient and they can't come in now and either get the benefit of charge on two thousand or more in a day or argue that to the jury because the accusatory instrument, the indictment here takes that right out of the case. Now to allow them to interject that as an alternate means of committing the same crime into the case that the conclusion is just not proper.

(709-710).

The next day, Judge Curtin concluded that as to the substantive count (Count II), the Government could not rely on the \$2,000 daily gross revenue to establish guilt (719). The judge concluded, however, that to determine whether the defendants were guilty of the conspiracy, the jury could consider whether either the \$2,000 theory or the alternative 30-day theory was part of the plan (720-721).

When discussing the conspiracy in his summation, the prosecutor argued both theories to the jury (730-732, 735).

In his charge to the jury,* Judge Curtin instructed the jurors as he had earlier:

... The Government is required to prove on Count 1 that each defendant conspired to break the law of New York and that the other

*The complete text of the charge is reproduced as "C" to the separate appendix to appellant's brief.

elements of the crime existed, namely, that the plan involved five or more persons, as I have described to you and that the plan involved, -- that the dice game was to be in substantially continuous operation for over thirty days or that the plan involved that the gross take was to be over \$2,000 in any one day.

(939-940).

You will note that in assessing Count 1, -- that is the conspiracy count, -- you may take into your consideration whether or not there was a gross revenue, the plan was whether there was a gross revenue of over \$2,000 in any particular day, but you may not take that evidence into account in making your determination as to Count 2, the substantive count.

(941).

At the conclusion of the charge, counsel objected to including the \$2,000 daily gross revenue theory in the charge on conspiracy (946). Specifically, counsel for appellant joined in the objection (950).

In a supplementary charge given in response to the jurors' inquiry,* the court repeated his instruction that only the 30-day operation alternative was to be considered in connection with the substantive count (966) and that, on that count, the jurors were not to consider the amount of revenue in the game (967).

Shortly thereafter the jury returned with its verdict. Russotti and Gimgello were acquitted of both counts. Appellant was acquitted of the substantive count and convicted of conspiracy.

*"On Count 2 is only the thirty day restriction involved?"

ARGUMENT

Point I

IT WAS ERROR FOR THE TRIAL JUDGE
TO SUBMIT THE 30-DAY ALTERNATIVE
TO THE JURY, AND THE JUDGMENT
MUST THEREFORE BE REVERSED.

Section 1955 requires proof of an illegal gambling business. The statute specifically names the three elements of an illegal gambling business and proof of each beyond a reasonable doubt is required to establish guilt. The three elements are violation of state gambling laws, involvement of at least five persons in the conduct of the game, and either that the game was in substantially continuous operation for at least 30 days (hereinafter the 30-day alternative) or that a daily gross revenue of at least \$2,000 (hereinafter the \$2,000 alternative) was received. See Ianelli v. United States, 420 U.S. 770, 790 (1975). A conspiracy to violate §1955 requires proof of the plan that will at least establish the elements of the substantive offense. United States v. Feola, 420 U.S. 671, 695-696 (1975).*

In the indictment in this case, charging both a substantive violation of 18 U.S.C. §1955 and a conspiracy to violate that section, the prosecutor relies exclusively on the 30-day alternative; no mention is made of the \$2,000 alternative. At

*The specific intent issue discussed in Feola is not raised here.

trial, counsel's position was that the Government failed to prove that the plan called for at least 30 days of substantially continuous operation or that the business proceeded for that long, and that a judgment of acquittal was therefore required. Since counsel was correct with respect to the 30-day alternative, it was error to submit that theory of appellant Russo's guilt to the jury, and a new trial must be granted.

A. Counsel properly raised the issue of the 30-day alternative.

At the conclusion of the prosecution's case, defense counsel requested that a judgment of acquittal be entered because the Government had failed to adduce proof that a business had been or would be in substantially continuous operation for 30 days or that the plan included such a business. Counsel's argument was that the Government had failed to prove the theory on which it had elected to premise the prosecution, as indicated by the absence of any reference in the indictment to the \$2,000 theory. The court denied the motion.

Later, the motion was renewed when counsel urged that the indictment be dismissed because it contained no allegation that the business had yielded a daily gross revenue of \$2,000. Implicit in that motion was counsel's assertion both that the \$2,000 theory had not been pleaded and that the 30-day alternative theory had not been proved. When the trial judge determined that the question of whether the 30-day theory had

been proved was for the jury to decide, counsel continued to object to the submission of the \$2,000 alternative, and protested before and after the court's charge was given. Thus, the trial court was aware that counsel had two grounds for objecting to submission of guilt on the conspiracy count to the jury: that the 30-day theory was not proved and that the \$2,000 theory was not charged in the indictment. The judge was thus sufficiently notified of the objection based on failure of proof, and the issue was properly raised and preserved. United States v. Natelli, 527 F.2d 311, 329 (2d Cir. 1975).

B. The Government failed to prove the 30-day alternative.

The Assistant United States Attorney conceded at trial that the Webster Street business was in operation for only five days. However, the prosecutor urged that the Webster Street game was merely a continuation of the Jay Street game, thus establishing the requisite time period. However, the record does not provide proof beyond a reasonable doubt either that the business lasted substantially continuously for 30 days (see United States v. Feola, supra, 420 U.S. at 676 n.9) or that the plan could have produced that result (see United States v. Feola, supra, 420 U.S. at 695-696).

To the contrary, the Jay Street business was an entirely separate enterprise from the one on Webster Street. The record shows that appellant Russo, Comfort, and Zito were investors in Jay Street, and that early in March that business was out

of funds and simply closed down.

A hiatus of several weeks existed between the closing of the Jay Street operation and the opening of the Webster Street game. By that time, Zito was acting as an informer, and he introduced appellant Russo to Government undercover agent Brana. The enterprise set up at Webster Street was run entirely and exclusively with Government funds provided by Brana.* Zito and Brana were in control of the money, taking it home at the close of business and returning it the following night. Brana's authority over the operation was seen by Zito's advice to appellant to tell Brana about all employees hired. Russo and Comfort were clearly not in control here as they had been in Jay Street.

The separate character of the Webster Street business is manifested by the attitude of Gingello and Russotti. For a fee of \$600, they had protected the Jay Street operation. A different attitude prevailed about Webster Street. Apparently afraid that New York investors, in the person of Brana, were planning a takeover of their Rochester turf, Gingello and Russotti ordered Zito to take his money and his friend and get out, thus, in essence, closing down the business. The ice money for Webster Street, reduced from \$600 to \$200, did not assure that

*Although his money was not forthcoming, Gingello was supposed to invest in the Webster Street operation. Nothing in the record shows that Gingello had any investment in the Jay Street operation.

Gingello would let the Webster Street business continue.*

Yet another factor that demonstrates that the two premises were not a substantially continuous operation of the same business was the treatment of the police. Zito testified that he saw police come into Jay Street and leave shortly thereafter. He said he was told by appellant and Comfort that payments were made. However, for Webster Street, new arrangements to take care of the police had to be made through the owner of a nearby bowling alley.

Further evidence that not one, but two, businesses were involved was that the business moved from Jay Street to Webster Street, and efforts were made to attract a different clientele for the Webster Street operation.

The only similarity between the two enterprises was that many of the employees worked at both. But even here there were notable differences. Paul Comfort, previously an investor and partner, was merely an employee at Webster Street; Sharfstein was a new employee at Webster Street; and the testimony indicated that other new employees were involved.

On this record, there was no proof beyond a reasonable doubt of the 30-day alternative. United States v. Taylor, 464 F.2d 240 (2d Cir. 1972).

*The reduction in "ice" money is yet further indication that the two businesses were not one substantially continuous operation.

C. It was error to submit the 30-day theory to the jury.

The insufficiency of the proof on the 30-day theory required a judgment of acquittal. However, in light of the trial court's decision to permit the jurors to rule on the \$2,000 theory, at a minimum the 30-day theory should not have been submitted for the jury's consideration. In so doing, the judge raised the possibility that some of the jurors may have convicted appellant of conspiracy based on the alternative element the Government had not proved. In such circumstances, the judgment must be vacated. Yates v. United States, 354 U.S. 298, 312 (1957); United States v. Natelli, supra, 527 F.2d at 325; cf. United States v. Jacobs, 475 F.2d 270, 283 (2d Cir. 1973).

In Natelli, the jurors were instructed on two specifications, one of which was not sufficiently proved. This Court reversed, saying:

... [I]f it is found as a matter of law that there should have been a directed verdict for a defendant on one of the specifications for insufficiency of evidence[,]
[t]he verdict then becomes ambiguous, for the jury could have rejected the specification which the appellant court holds sufficiently proved, and have convicted only on the specification held to be insufficiently proved. In that event, there seems to be no alternative to remand for a new trial. That is the general principle.

Id., 527 F.2d at 325.

Point II

THE JUDGE IMPROPERLY SUBMITTED THE \$2,000 ALTERNATIVE TO THE JURY.

As earlier noted, the indictment nowhere makes any reference to the \$2,000 alternative. Based on this omission, counsel asked that it not be submitted to the jury. The Government necessarily conceded that the \$2,000 was not included, but argued that tracking the statute was enough. The district judge agreed that the alternative should not be presented to the jury for consideration of the substantive count, but concluded otherwise with respect to the conspiracy count. He said that the Government can be given a freer hand in a conspiracy count than with a substantive count (719).*

Judge Curtin's remarks are inconsistent with his earlier, and correct, observation that if the Government outlines one theory of guilt in its indictment, it is difficult for the defense to prepare its case if the Government then changes its theory (695). Indeed, the judge's observation sums up the objection made by counsel to the submission of the \$2,000 theory to the jurors.

When drafting the indictment -- indeed, with a second opportunity to draft that document -- the Government obviously made a deliberate choice of the alternative theories of guilt left to it by Congress. Surely, the Assistant United States

*The judge's full remarks are reproduced at "D" of the separate appendix to appellant's brief.

Attorney knew of the evidence and structure of his case. He nonetheless made no reference to the \$2,000 alternative. The Government's argument that the indictment tracked the language of the statute, in a situation in which the statute provides two distinct ways of proving guilt, is clearly not adequate.

While this Court has often held that tracking the statute is adequate, the rationale cannot apply here. With normal tracking, a reference to the statute will advise the defense of the elements of the crime the Government will attempt to prove. Answers to a bill of particulars can then yield the specific facts. In this case, the indictment advised appellant that the Government chose to prove the 30-day alternative. Appellant or his counsel could not possibly deem it necessary to ask in a bill of particulars whether the Government intended to rely on the \$2,000 rule. Indeed, logically, he would not even deem it relevant to ask in a bill of particulars for information concerning the wagers or bets, and in advance of trial would not direct his attention to collecting evidence on those matters.

The indictment as drafted did not give appellant notice of the nature of the charges against him which he was constitutionally entitled to receive. Russell v. United States, 369 U.S. 749, 764 (1962). In this context, appellant was impermissibly charged with one crime and convicted of another. United States v. Goodson, 502 F.2d 1303 (5th Cir. 1974); Danielson v. United States, 321 F.2d 441 (9th Cir. 1963). Such

a conviction is invalid and must be vacated.

CONCLUSION

For the foregoing reasons, the judgment of the district court must be reversed and the case remanded for a new trial.

Respectfully submitted,

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
CHARLES RUSSO
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,
Of Counsel.

CERTIFICATE OF SERVICE

July 1, 1977

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the ~~Western~~ District of New York.

RL SL